

# Special educational needs and disabilities

## Introduction and background

In 2014 Parliament introduced legislation to transform the educational experiences of children and young people with special educational needs and disabilities (SEND). The reforms sought to place young people at the heart of the system. Proposals included:

- The introduction of a co-ordinated assessment process for children's education, health and care needs;
- Ensuring that local communities work together effectively to help children and young people with SEND and that communication between different services is improved;
- Ensuring that the new Education, Health and Care Plans (EHCPs) help young people to prepare for adulthood; and
- Introducing supported internships to help young people with SEND to prepare for the workplace.

The Government's proposals were trialled extensively from October 2011 onwards with 31 'pathfinder' local authorities (LAs). Following the trials, the Children and Families' Act gained royal assent in March 2014. In 2018 the House of Commons Education Committee launched an inquiry to scrutinise how successfully Part 3 of the Act had been implemented. The Committee received over 700 submissions of written evidence including a number of personal testimonies. The Committee also held 12 oral evidence sessions with a wide range of stakeholders including children, parents and representatives from charities, schools and colleges.

This summary focusses on the first part of the report in which the Committee draws on submissions to examine the implementation of the reforms and make recommendations. Part 2 includes more detail on the testimonies received.

## Key points

### Implementation and regulation of the 2014 reforms

- Many people welcomed the 2014 reforms. The Committee feels that they were the right ones and that if the challenges within the system are addressed, LAs will be able to discharge their duties effectively.
- Funds to implement the SEND reforms were given to LAs in a non-ringfenced manner at a time when overall LA budgets were being cut by the DfE. This led to the money being used other ways than supporting transition to the new system. Here was a failure to provide extra money when it was needed.
- The significant shortfall in funding is a serious contributory factor in the failure of schools and LAs to meet the needs of children and young people with SEND. However, unless there is a cultural shift throughout the system, additional funding will make little difference.
- The DfE failed to fully consider the costs and pressures created by the duty to maintain EHC plans to age 25. Funding has not been transferred from the adult social care budget. There has also been a lack of clarity about who is paying for what. Some schools and LAs have been paying for interventions which should have been provided by health services. This has led to stretched budgets, therapies not being delivered and LAs avoiding duties to young people post-19.
- The inquiry asked the DfE how it measures the success of the SEND system. The Minister for Children was able to list the data which is available. The Minister for Schools reported that the new Ofsted framework has a greater focus on the progress of children with SEND. However, no one appears to be taking any action based on the counting and measuring of data. There seems to be an absence of responsibility for driving change or holding people accountable when change does not happen.
- The inquiry heard that it is not currently in the remit of Local Government and the Social Care Ombudsman to investigate what goes on inside schools. The Ombudsman reported that he is only able to look at 'everything up to the school gates'. To date, the Minister for Schools has not made any commitment to extend the Ombudsman's power. Furthermore, Ofsted and the Care Quality Commission (CQC) do not have a duty to report on compliance with the law, although Ofsted can make judgements regarding unlawful practice in other areas such as extremism. The DfE does not appear to be taking enough responsibility for

ensuring that its reforms are overseen and that timescales are adhered to.

### Recommendations

- The DfE and the Department for Health and Social Care should develop mutually beneficial options for cost and burden sharing with the health and social care sector.
- The CQC and Ofsted should design and implement an inspection regime which enables LAs and their partners to be held to account and which sets a clear timeframe for re-inspection. They should also set out the consequences for LAs and health bodies which fail their annual inspection.
- The DfE should bring forward legislative proposals to allow the Social Care Ombudsman to consider what takes place within a school.
- The Government should introduce a responsibility and accountability mechanism for non-compliance so that parents and schools can report directly to the DfE where LAs appear not to be complying with the law. There should also be an annual scorecard to measure the success of LAs and health bodies against the reforms. The scorecards would be placed in the House of Commons library.

### Vicious cycle to virtuous circle

- The intense time pressure on transfers from SEND statements to EHC plans has led to the neglect of children on SEN support (those without EHC plans whose schools still need to provide them with additional support). This has resulted in an increase in EHC plan applications and to practices of rationing and gatekeeping. The 'notional' budgets which are allocated to schools for the provision of children with SEND support are not always being spent appropriately.

### Recommendations

- In its review of provision for pupils with SEND, the Government should focus on the notional budget in order to ensure that the needs of pupils without an EHC plan are being met. The DfE should identify LAs who have developed effective practices of early intervention.

### Professional development and bureaucracy

- As the numbers of pupils with SEND rise, SENCOs play an increasingly important role in schools. However, the Committee heard that they can be diverted by other duties or that they sometimes work part-time.
- The Committee heard about a lack of training for front-line staff in LAs which can result in a lack of knowledge about SEND law and procedures. This in turn leads to mistakes being made.
- Therapists are at times unable to spend the appropriate time with children and young people, provide the expert advice that is relied on for needs assessments and attend annual reviews. In some cases, they are unable to provide the specified interventions because there is insufficient staffing.
- The Committee heard evidence that parents often feel alone in negotiating the system and there was no one who could help them; as a result, they sometimes lose out on entitlements.

### Recommendations

- The DfE should issue guidance stating that all SENCOs should undertake the NASENCO course as soon as they take up a SEN role. It should look into the cost implications

of requiring schools and colleges to have a dedicated full-time SENCO. There should be a recommendation about the size of school for which only a part-time SENCO is required.

### Additional limiting factors

- As mainstream schools struggle to meet the needs of children with lower-level SEND, their parents and carers are seeking help and support in more specialised provision. Local maintained provision is experiencing pressure on placements with the result that local children are being pushed towards costly (often independent) specialist provision.
- The Committee heard about a lack of support regarding the wider outcomes of those with SEND. Young people did not feel supported in terms of their life goals and future plans.
- In some areas, young people with SEND do not have enough opportunities to gain employment experience. This was flagged up in an earlier report by the Education Committee, and there has been little progress. Many young people are ineligible for help with employment experience because they do not have an EHC plan.
- The local offer is an LA's publication of all the provision which they expect to be available across education, health and social care for young people with SEND, including those who do not have an EHC plan. The Committee heard that where it is done well, the local offer can deliver better outcomes. However, in other cases it can be difficult to create and use.

### Recommendations

- The DfE should explore the possibility of creating a neutral co-ordinator role allocated to every parent or carer when a request for a needs assessment is made.
- The DfE should enable LAs to create new maintained special schools outside the constraints of the free school programme.
- The DfE's SEND review should identify best practice for including all children's and parents'/carers' views when deciding on the provision of support.
- The Government should establish a cross-departmental working group to develop a strategy for increasing internship, apprenticeship and employment opportunities for young people with SEND. The group should also review the capacity of LAs to meet the independent living needs of young people with SEND and develop an action plan.
- The DfE and the Department for Health and Social Care should jointly conduct reviews of each LA's local offer; the review should be undertaken in collaboration with children, young people, parents and carers. The DfE should map the provision available through each LA's local offer to ensure that all LAs offer at least a minimum level.

The full document can be downloaded from:

<https://publications.parliament.uk/pa/cm201920/cmselect/cmeduc/20/20.pdf>